IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1869 OF 2004

IN

SUMMARY SUIT NO.3325 OF 1995

SICOM Ltd. ... Plaintiffs

v/s

Rajesh Chandrakant Patel and anr. ... Defendants

Mr P.V. Shah for Plaintiffs.

Mr Rohit Kapadia with Mr H.N. Thakore and Ms Jyoti Ghag i/b M/s Thakore Jariwala and Associates for Defendant No.1.

CORAM : D.K.DESHMUKH J.

DATE : 5TH MAY 2005

P.C.: -

1. This is a notice of motion taken out by the defendant No.1. An ex-parte decree dated 7th December 1998 was passed in summons for judgment No.533 of 1997. The defendant No.1 admittedly was served with the writ of summons as also the summons for judgment. It is his case that he had engaged the lawyer, the lawyer was paid, but the lawyer did not appear. I do not find any document placed on record to substantiate his case that it is the mistake of the lawyer and because of the mistake of the lawyer, the defendant No.1 did not appear in Court. There were submissions made before me that the plaintiffs have committed some defaults in proceeding against the principal debtor which is a Company and that the SICOM has not recovered optimum amount that could have been recovered from the Company. In my opinion, it is not relevant as the defendant No.1 is a guarantor, his liability is joint and several with the principal debtor and therefore, it was open to the plaintiffs to proceed only against the defendant No.2 excluding the principal debtor. Taking overall view of the matter therefore, it is clear that the present notice of motion has no substance and has been taken out to avoid liability of making payment. Notice of motion is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.